Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

PARDEE COAL COMPANY, INC., HUMPHREYS ENTERPRISES, INC., RIVER RESOURCES, INC., GREATER WISE, INC., AND RED RIVER COAL COMPANY, INC.

Petitioners,

v.

MICHAEL H. HOLLAND; WILLIAM P. HOBGOOD; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOT A. SEGAL; CARL E. VAN HORN; AND GAIL R. WILENSKY,
Trustees of the United Mine Workers of America Combined Benefit Fund,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701 *et seq.*, reconfigured the system for providing private health care benefits to retired coal miners and their dependents. As part of the restructuring of this system, Congress established the United Mine Workers of America Combined Benefit Fund ("Combined Fund") to provide benefits to individuals previously covered by the predecessor UMWA 1950 and 1974 Benefit Plans. The funding mechanism for the Combined Fund was dependent on the assignment of these UMWA beneficiaries to parties who would then become liable for premium payments based on the number of individuals they were assigned. Anticipating that there would be beneficiaries who remained unassigned because no existing company falls within the categories of liable parties, Congress provided for additional Combined Fund financing, either with funds transferred from interest earned on the Department of the Interior's Abandoned Mine Reclamation Fund or from additional premiums imposed on all assigned operators.

In accordance with the overall statutory structure, which included a timetable for the creation and funding of the Combined Fund, Congress directed the Commissioner of the Social Security Administration ("SSA") to assign retirees "before October 1, 1993," 26 U.S.C. § 9706(a). The question presented is whether the Coal Act directive to SSA to make assignments before October 1, 1993 precluded SSA from later making new assignments after October 1, 1993.

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, the United States appeared as an *amicus curiae* in the court of appeals.

STATEMENT UNDER RULE 29.6

Petitioners Pardee Coal Company, Inc., *et al.*, are all privately held corporations. There is no parent or publicly held company holding 10% or more of the corporations' stock.

TABLE OF CONTENTS

Page [s]

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

STATEMENT UNDER RULE 29.6 ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 3

I. STRUCTURE OF THE ACT 3

II. PROCEEDINGS BELOW 4

REASONS FOR GRANTING THE PETITION 6

I. THE COURT HAS GRANTED A PETITION FOR CERTIORARI IN PEABODY/BELLAIRE, CASES ARISING IN THE SIXTH CIRCUIT WHICH PRESENT THE SAME ISSUE 6

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS INTERPRETING THE COAL ACT 7

CONCLUSION 9

APPENDIX A (court of appeals opinion) 1a

APPENDIX B (district court opinion) 26a

APPENDIX C (district court judgment) 47a

APPENDIX D (court of appeals orders denying petition for rehearing en banc) 48a

TABLE OF AUTHORITIES

CASES: **Page [s]**

Anderson v. Yungkau, 329 U.S. 482 (1947) 8

Barnhart v. Sigmon Coal Co., Inc., - - U.S. - -, No. 00-1307 (Feb. 19, 2002) 3, 7, 8

Barnhart v. Peabody Coal Co., No. 01-705, *cert. granted* Jan. 22, 2002 ..... 6, 7

Bellaire Corp. v. Massanari, Nos. 00-4080, 00-4082 (6th Cir. 2001) 6

Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1983) 5

Dixie Fuel Co. v. Comm'r of SSA, 171 F.3d 1052 (6th Cir. 1999) 5, 6

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998) 3

Holland v.Bellaire Corp., No. 01-715, *cert. granted* Jan. 22, 2002 ..... 6, 7

Mallard v. United States Dist. Court, 490 U.S. 296 (1989) 8

Peabody Coal Co. v. Massanari, No. 00-6239 (6th Cir. 2001) 6

United States v. Monsanto, 491 U.S. 600 (1989) 8

STATUTES AND REGULATIONS:

Coal Industry Retiree Health Benefit Act of 1992
26 U.S.C. § 9701 *et seq.* ..... *passim*
26 U.S.C. § 9704(a) 4
26 U.S.C. § 9704(d) 4
26 U.S.C. § 9704(f) 8
26 U.S.C. § 9705(b) 4
26 U.S.C. § 9706(a) 2, 3, 7
28 U.S.C. § 1254(l) 2

No. ___

IN THE

Supreme Court of the United States

PARDEE COAL COMPANY, INC., HUMPHREYS ENTERPRISES, INC., RIVER RESOURCES, INC., GREATER WISE, INC., AND RED RIVER COAL COMPANY, INC.

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MICHAEL H. HOLLAND; WILLIAM P. HOBGOOD; MARTY D. HUDSON; THOMAS O.S. RAND; ELLIOT A. SEGAL; CARL E. VAN HORN; AND GAIL R. WILENSKY,
Trustees of the United Mine Workers of America Combined Benefit Fund,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

PETITION FOR A WRIT OF CERTIORARI

Pardee Coal Company, Inc., *et al.*, by their undersigned counsel, respectfully petition for a writ of certiorari to review the judgment of the court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, 1a-25a) is reported at 269 F.3d 424 (4th Cir. 2001). The opinion of the district court (App. D, 26a-46a) is reported at 93 F.Supp. 2d 706 (W.D.Va. 2000).

JURISDICTION

The judgment of the court of appeals was entered on October 18, 2001. On November 14, 2001, the court of appeals denied a petition for rehearing en banc filed by Pardee Coal Company, Inc., *et al.* A superseding order denying the petition was entered by the court of appeals on November 20, 2001. (App. D, 48a-51a)

On February 6, 2002, Chief Justice Rehnquist extended the time within which to file a petition for a writ of certiorari to and including March 14, 2002. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(l).

STATUTORY PROVISION INVOLVED

Section 9706(a) of Title 26, United States Code, provides:

For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which —

  (A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

  (B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which —

  (A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

  (B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal

industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

STATEMENT OF THE CASE

The Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), signed into law on October 24, 1992, is a comprehensive legislative program which reconfigured the system for providing private health care benefits to retirees in the coal industry. By restructuring this system, Congress intended to solve the historical funding problems of the then-existing United Mine Workers of America ("UMWA") Benefit Plans once and for all. The Court has previously detailed the history of the coal industry's attempt to establish, through collective bargaining, an adequate system of health and retirement benefits for coal miners and the resulting labor unrest and financial instability which led to passage of the Coal Act in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-514 (1998) and *Barnhart v. Sigmon Coal Co., Inc.*, No. 00-1307, Slip op. at 2-7 (Feb. 19, 2002).

I. STRUCTURE OF THE ACT

The Coal Act was precisely drawn to create, in an orderly fashion, a stable, lasting structure for providing health benefits. As part of the comprehensive system it established in the Coal Act, Congress charged SSA with assigning each eligible beneficiary of the Combined Fund to a signatory operator or its related persons. This was to be accomplished "before October 1, 1993." 26 U.S.C. § 9706(a).

Within the broader parameters of the Coal Act, the October 1, 1993 date by which SSA was directed to make assignments was not an isolated instance of Congressional timing. Beginning in October 1992, Congress set in motion a series of events with specific deadlines for their completion. This including bringing the Combined Fund into existence as of February 1, 1993 and arranging for infusions of funds from other sources on specific dates.

Recognizing that not all retirees could be paired with a former employer or "related person" to a former employer, Congress made specific provisions for so-called "unassigned" beneficiaries. The Coal Act ensures that if a beneficiary remains unassigned because no existing company falls within the categories of liable parties, then benefits will be financed by the Combined Fund, either with funds transferred from interest earned on the Department of the Interior's Abandoned Mine Reclamation Fund or from additional premiums imposed on all assigned operators. 26 U.S.C. §§ 9704(a),(d); 9705(b).

In 1993 and again in 1995, Congress held hearings on the Coal Act and its implementation. SSA reported its success in carrying out its mission on both occasions. This included a representation that it completed the process of making the initial assignment decisions by October 1, 1993, as required by law. While the statute was never amended to revise the October 1, 1993 date, SSA subsequently took the position that it did not complete the assignment process by the specified date.

II. PROCEEDINGS BELOW

In 1995 and 1997 respectively, Pardee Coal Company was notified by SSA that it had been assigned liability for two retirees (Grover Bolling and Orvil Brewer) and their dependents. SSA had previously assigned Pardee another retiree (Curtis Hess) in 1993. The Trustees of the Combined Fund initiated this action in the Western District of Virginia on July 7, 1998, claiming that Pardee was liable for additional premium payments beyond those which had already been made to the Combined Fund. The four additional corporations who are parties to this action were named as "related persons" to Pardee within the meaning of the statute who were accordingly liable for Pardee's debts.

On April 7, 2000, the district court issued a memorandum opinion and order granting, in part, the defendant companies' motion for summary judgment. App.

26a. The district court concluded that the 1995 and 1997 assignments were untimely and invalid. Applying the analysis of *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 842 (1983), the court found that the language of the statute is unmistakably mandatory, and that no substantial prejudice would result from requiring SSA to make the assignments by October 1, 1993. The district court adopted the view expressed by the Sixth Circuit in *Dixie Fuel Co. v. Comm'r of SSA*, 171 F.3d 1052 (6th Cir. 1999) that the entire statutory scheme for the operation of the Combined Fund reflects a congressional intent that the assignments be completed by October 1, 1993. Thus, the court concluded that Congress meant for SSA to assign beneficiaries by October 1, 1993, reducing the remainder to the unassigned beneficiary pool. Excluding the 1995 and 1997 assignments, the court entered final judgment in Pardee's favor. App. 47a.

The Trustees of the Combined Fund appealed this judgment to the court of appeals for the Fourth Circuit, contending, with the support of the United States, that the October 1, 1993 date was not intended to be a deadline and that there was no reason to conclude that Congress would disapprove of SSA's post-October 1, 1993 assignments. The court of appeals, in a spit decision, agreed. The court found that the intent of Congress to establish October 1, 1993 as a deadline cannot be divined from the text of the statute. Rather, the court construed the statute as contemplating more fluidity in assignments than this would allow. Finding no clear congressional intent to establish October 1, 1993 as a deadline in the legislative history, the court of appeals overturned the decision holding the 1995 and 1997 assignments to Pardee to be invalid.

The dissenting circuit judge concluded that the majority was improperly adjusting the financial equities of the Coal Act by judicial mandate. In his view, Congress had spoken directly and unambiguously on the issue of when the Commissioner's authority to make assignments expired. He

accordingly agreed with the contrary result of *Dixie Fuel* holding post-October 1, 1993 assignments to be invalid.

REASONS FOR GRANTING THE PETITION

I. THE COURT HAS GRANTED PETITIONS FOR CERTIORARI IN TWO CONSOLIDATED CASES ARISING IN THE SIXTH CIRCUIT WHICH PRESENT THE SAME ISSUE

SSA did not seek review of *Dixie Fuel* by this Court. However, both SSA and the Trustees of the Combined Fund continued to pursue the issue of the validity of post-October 1, 1993 assignments in other cases arising in the Sixth Circuit. Two such cases were decided shortly before the decision in this case was issued by the Fourth Circuit. In *Peabody Coal Co. v. Massanari*, No. 00-6239 (6th Cir. 2001) and *Bellaire Corp. v. Massanari*, Nos. 00-4080, 00-4082 (6th Cir. 2001), the court of appeals followed *Dixie Fuel* as the controlling precedent in the Sixth Circuit.

SSA and the Trustees sought review of these Sixth Circuit decisions and their petitions for writs of *certiorari* were granted. Thus, the present case presents the same question as that presented by *Barnhart v. Peabody Coal Co.*, No. 01-705, *cert. granted* Jan. 22, 2002, and *Holland v. Bellaire Corp.*, No. 01-715, *cert. granted* Jan. 22, 2002. These cases have been consolidated by the Court and briefing is under way.

The present case is the source of the conflict between the circuits which was highlighted by the petitioners in support of their request for review by the Court in *Peabody/Bellaire*. While Pardee believes that the *Dixie Fuel* line of cases was correctly decided, the Court's review of this issue should extend to Pardee's case.

The validity of post-October 1, 1993 assignments is clearly framed by the submissions of the parties in *Peabody/Bellaire*. Petitioners therefore respectfully suggest that the Court hold the petition in this case pending

disposition of *Peabody/Bellaire*, and that the petition then be disposed of as appropriate in light of the Court's disposition in *Peabody/Bellaire*.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISION INTERPRETING THE COAL ACT

The court of appeals' decision in this case rests on an interpretation of the Coal Act which is in direct conflict with this court's recent decision in *Barnhart v. Sigmon Coal Co., Inc.*, No. 00-1307 (Feb. 19, 2002). In *Sigmon*, the Court declined to deviate from the clear statutory language of the Coal Act, rejecting SSA's claim that there was an overarching legislative purpose to be served by a more expansive view of the statutory text. The Court recognized that negotiations surrounding enactment of this bill tell a typical story of legislative battle among interest groups, Congress and the President, and that its delicate crafting reflected a compromise amidst highly interested parties attempting to pull provisions in different directions. As such, a change in any individual provision could have unraveled the whole. Absent a conflicting provision or ambiguous language, the Court cautioned against altering the text of the statute to satisfy the policy preferences of SSA. Slip op. at 21-22.

The Coal Act set forth a comprehensive and orderly process whereby coal industry retirees would be provided coverage for medical benefits. Congress directed SSA to perform the task of making assignments, and allowed SSA nearly a full year to assign each coal industry retiree to a signatory operator or related person according to a specified hierarchy. Specifically, Congress provided that:

> The Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree . . . to a signatory operator which (or any related person with respect to which) remains in business. . . .

26 U.S.C. § 9706(a).

The language of this provision, directing that SSA "shall" perform the designated task, is, on its face, a clear and unambiguous mandate to SSA to assign beneficiaries before October 1, 1993. *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (Congress could not have chosen stronger words than "shall order" to express a mandatory intent); *Mallard v. United States Dist. Court*, 490 U.S. 296, 302 (1989) (the use of the word "shall" indicates a command); *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) (the word "shall" is ordinarily "The language of command") The only question is whether there is a reason to find that the statute does not mean what it says.

The statute as a whole supports a conclusion that Congress fully intended the October 1, 1993 date as a deadline. Congress set up a comprehensive timeframe for creation and funding of the Combined Fund. It connected funding and premium calculations to the status of assignments as of October 1, 1993. 26 U.S.C. § 9704(f). Any beneficiaries not initially assigned by this deadline became "unassigned" beneficiaries whose number was an essential part of the calculation of the obligation of each assigned operator. *Id.* Absent a specific figure representing the number of unassigned beneficiaries, the statutory scheme as a whole would be undermined.

By rejecting the conclusion that Congress intended the October 1, 1993 date as a deadline, the court of appeals engaged in precisely the type of excessive judicial inquiry which the Court held to be improper in *Sigmon*. As in *Sigmon*, the Court is presented with SSA's attempt to appropriate authority to assign liability inconsistent with the statute. For that reason, this Court's review is warranted.

CONCLUSION

The petition for a writ of certiorari should be held pending the disposition of *Peabody/Bellaire*, Nos. 01-705 and 01-715, and then disposed of as appropriate in light of the disposition of that consolidated case.

Respectfully submitted,

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APPENDIX A

No. 00-1770

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MICHAEL H. HOLLAND, Trustee of the United Mine Workers of America Combined Benefit Fund; MARTY D. HUDSON, Trustee of the United Mine Workers of America Combined Benefit Fund; ELLIOT A. SEGAL, Trustee of the United Mine Workers of America Combined Benefit Fund; THOMAS O. S. RAND, Trustee of the United Mine Workers of America Combined Benefit Fund; WILLIAM P. HOBGOOD, Trustee of the United Mine Workers of America Combined Benefit Fund; GAIL R. WILENSKY, Trustee of the United Mine Workers of America Combined Benefit Fund; CARL E. VAN HORN, Trustee of the United Mine Workers of America Combined Benefit Fund,
Plaintiffs-Appellants,

v.

PARDEE COAL COMPANY; HUMPHREYS ENTERPRISES, INCORPORATED; RIVER RESOURCES, INCORPORATED; GREATER WISE, INCORPORATED; RED RIVER COAL COMPANY, INCORPORATED,
Defendants-Appellees.

UNITED STATES OF AMERICA, *Amicus Curiae*.

January 25, 2001, Argued

October 18, 2001, Decided

COUNSEL:
ARGUED: Peter Buscemi, MORGAN, LEWIS & BOCKIUS, L.L.P., Washington, D.C., for Appellants.

Jeffrey A. Clair, Civil Division, UNITED STATES.

DEPARTMENT OF JUSTICE, Washington, D.C., for *Amicus Curiae*.

Mary Lou Smith, HOWE, ANDERSON & STEYER, P.C., Washington, D.C., for Appellees.

ON BRIEF: David W. Allen, Office of the General Counsel, UMWA HEALTH & RETIREMENT FUNDS, Washington, D.C.; John R. Mooney, MOONEY, GREEN, GLEASON, BAKER, GIBSON & SAINDON, P.C., Washington, D.C., for Appellants.

David W. Ogden, Assistant Attorney General, Robert P. Crouch, Jr., United States Attorney, Mark B. Stern, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for *Amicus Curiae*.

Daniel R. Bieger, COPELAND, MOLINARY & BIEGER, P.C., Abingdon, Virginia, for Appellees.

JUDGES:
Before NIEMEYER and KING, Circuit Judges, and Gerald Bruce LEE, United States District Judge for the Eastern District of Virginia, sitting by designation. Judge King wrote the majority opinion, in which Judge Lee joined. Judge Niemeyer wrote a dissenting opinion.

OPINIONBY:
KING

OPINION:

KING, Circuit Judge:

This proceeding requires us to construe certain provisions of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act" or "Act"), 26 U.S.C. § § 9701-9722. Appellants, the Trustees ("Trustees") of the United Mine Workers of America Combined Benefit Fund ("Combined Fund"), brought this suit in the Western District of Virginia against Pardee Coal Company and four other current and former coal operators (collectively, "Pardee"). The Trustees

seek to collect payment of health care premiums for which, they claim, Pardee is liable pursuant to the Coal Act.[1]

Pardee denied its liability for the health care premiums to the extent they arose from beneficiary assignments made by the Social Security Administration ("SSA") on or after October 1, 1993. The district court adopted Pardee's position, concluding, inter alia, that October 1, 1993, was a firm statutory deadline and that Pardee was not liable for beneficiary assignments made after that date. *See Holland v. Pardee Coal Co.*, 93 F. Supp. 2d 706 (W.D. Va. 2000). Having carefully considered the Act and the relevant precedent, we find ourselves at odds with the district court's conclusion, and we accordingly reverse and remand.

---

[1] As explained more fully in Part I.A, *infra*, the Coal Act establishes a class of "signatory operators," consisting of coal operators that had been signatories to certain collective bargaining agreements. *See* 26 U.S.C. § 9701(c)(1). Section 9704(a) delineates the liability of "assigned operators," i.e., those signatory operators to whom liability for individual miners is assigned:

> Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums--
>
> (1) the health benefit premium determined under subsection
>
> (b) for such plan year, plus
>
> (2) the death benefit premium determined under subsection
>
> (c) for such plan year, plus
>
> (3) the unassigned premium determined under subsection (d) for such plan year.
>
> Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.
>
> 26 U.S.C. § 9704(a).

I.

A.

Enacted in 1992, the Coal Act was designed to address and "remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry." 26 U.S.C.A. § 9701 (note) (West Supp. 2001).[2] Since 1947, medical and pension benefits for retired coal miners and their families have been provided through a series of multiemployer health plans established pursuant to successive collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). Beginning in 1951, the NBCWAs were negotiated by the United Mine Workers of America ("UMWA"), on behalf of coal miners, and the Bituminous Coal Operators' Association, Inc. ("BCOA"), on behalf of coal operators. Pursuant to the NBCWAs, a series of multiemployer trusts were established (collectively, the "Benefit Plans"), funded by per-ton royalties levied on the coal produced by contributing operators, providing for coverage of the nonpension benefits -- including health care benefits -- of both active and retired miners.[3] Under the Benefit Plans, coverage was provided not only for retired employees of active coal operators, but also extended to

---

[2] Although we include a brief chronology and explication of the Coal Act here, a more thorough account is provided in the Supreme Court's decision in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-16, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998) (holding that the Coal Act, as applied retroactively to corporations no longer participating in the coal industry, represents an unconstitutional taking). *See also Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1126-29 (4th Cir. 1996).

[3] More particularly, two Benefit Plans established thereunder are relevant to this proceeding. The 1950 Benefit Plan provided medical benefits to those miners who retired before January 1, 1976, and their dependents, while the 1974 Benefit Plan covered active miners and those retiring after 1975. *See Eastern Enters.*, 524 U.S. at 509.

"orphan" retirees, i.e., those retired miners whose employers had gone out of business or ceased contributing to the Benefit Plans.

The financial viability of the Benefit Plans became precarious as the cost of health care benefits escalated, coal production decreased, and coal operators steadily exited the industry. Coal operators rapidly abandoned the Benefit Plans, leaving an ever-diminishing group of coal operators "to absorb the increasing cost of covering retirees left behind by exiting employers." *See Eastern Enters. v. Apfel*, 524 U.S. 498, 511, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998) ("A spiral soon developed, with the rising cost of participation leaving more employers to withdraw from the Benefit Plans, resulting in more onerous obligations for those that remained.").

This funding crisis culminated in 1989 in an eleven-month strike provoked by Pittston Coal Company's refusal to sign the 1988 NBCWA. Secretary of Labor Dole intervened in the dispute, establishing a bipartisan commission ("Coal Commission") to assess the Benefit Plans' financial status and to recommend "'a solution for ensuring that orphan retirees in the [Benefit Plans] will continue to receive promised medical care.'" *See id.* (quoting *Coal Comm'n Report 2, App.* (CA1) 1933). The Coal Commission observed that coal miners had, in their labor negotiations, "'traded lower pensions over the years for better health care benefits[,]'" *id.* (quoting Coal *Comm'n Report, Executive Summary vii, App.* (CA1) 1324), and thus were entitled to receive the promised benefits.

While there was consensus that "'a statutory obligation to contribute to the plan should be imposed on current and former signatories to the NBCWA,' the members of the Coal Commission disagreed about 'whether the entire [coal] industry should contribute to the resolution of the problem of orphan retirees.'" *See id.* (quoting *Coal Comm'n Report, Executive Summary vii, App.* (CA1) 1324).

By its enactment, the Coal Act merged the Benefit Plans into a new multiemployer plan, the Combined Fund, *see* 26 U.S.C. § 9702(a), which would provide "substantially the same" health benefits to retirees and their dependents as they were receiving under the Benefit Plans. *See* 26 U.S.C. § 9703(b). The Combined Fund's initial "plan year" was the eight-month period from February 1, 1993, to September 30, 1993, with successive twelve-month plan years to begin on October 1 and end on September 30 of each year following. *See* 26 U.S.C. § 9702(c). The Act established an interim funding scheme for the first plan year, *see* 26 U.S.C. §§9704(i)(1)(A), 9705(a), after which time liability for individual retirees was assigned to specific coal operators according to the criteria set forth in 26 U.S.C. § 9706.

Under this "pay for your own" liability apportionment scheme, Congress required signatory operators (i.e., coal operators that had been signatories to NBCWAs) that were still "in business" and that had employed a particular beneficiary in the past to assume liability for the future medical benefits of that beneficiary. *See Pardee Coal*, 93 F. Supp. 2d at 712. Congress directed the SSA to, "before October 1, 1993," assign each eligible coal industry retiree to a signatory operator according to specified criteria, *see* 26 U.S.C. § 9706(a), anticipating that such assignments would serve as the basis for the Combined Fund's first premium assessments (i.e., for the second plan year beginning October 1, 1993).[4]

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[4] Section 9706(a) establishes a uniform system of preference for assigning beneficiaries, as follows:

The Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which--

The Act also provided financing for the health care benefits of "orphaned retirees," those retired miners whose employers had gone out of business and could not be assigned to any other party under the criteria set forth in 26 U.S.C. § 9706. To subsidize the health care costs of such unassigned beneficiaries, Congress authorized substantial contributions to the Combined Fund from the UMWA 1950 Pension Plan and from the Abandoned Mine Reclamation Fund ("AML Fund"), established under the Surface Mining Control and Reclamation Act of 1977. *See* 26 U.S.C. § 9705; 30 U.S.C. §1231.

Specifically, on the first day of each of the Combined Fund's first three plan years, a $70 million transfer was to be made from the UMWA 1950 Pension Plan to the Combined Fund. *See* 26 U.S.C. § 9705(a). Thereafter, for the plan years beginning on and after October 1, 1995, Congress provided for annual transfers to the Combined Fund of up to $70 million in interest earned by the AML Fund; such transfers are solely dedicated to paying the health care premiums of unassigned beneficiaries. *See* 30 U.S.C. § 1232(h). To the extent that such transfers are inadequate to cover the expenditures on behalf of unassigned beneficiaries, the Act provides for the excess costs to be borne by assigned operators, according to their proportionate share of the

---

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and (B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which--

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

assigned beneficiaries. *See* 26 U.S.C. § § 9704(a)(3), 9704(d), & 9705(b)(2). To date, however, the transfers have proven sufficient, and assigned coal operators have been spared any responsibility for the premiums of unassigned beneficiaries.

B.

Pursuant to its assignment authority under § 9706, the SSA determined that Pardee was a "signatory operator," and it assigned Pardee liability for the health care premiums of certain retired miners and their spouses. Retired miner Curtis Hess was assigned to Pardee on September 29, 1993, followed by Grover Bolling and Orvil Brewer (and their spouses), on September 20, 1995, and September 22, 1997, respectively. Consistent with these assignments, the Combined Fund notified Pardee annually of its health care premium obligations, and, with each notification, requested payment of the premiums. Although Pardee made partial payments to the Combined Fund in the sum of $28,604.19 between October 1, 1993, and June 25, 1999, it denied liability for the premiums associated with the Bolling and Brewer assignments, which had been made after October 1, 1993. The Trustees maintained that such assignments were valid, and they filed suit in the Western District of Virginia to recover the outstanding balance of $57,498.43 allegedly owed by Pardee in delinquent payments.[5]

Pardee asserted, in response, that the Bolling and Brewer assignments were untimely and invalid, and, furthermore, it contended that the Coal Act contravened the Due Process and Takings Clauses of the Constitution. Accordingly, Pardee filed a counterclaim to recover payments already made to the Combined Fund pursuant to the September 29, 1993 assignment of Curtis Hess. Although Hess had been assigned to Pardee during the prescribed statutory period, Pardee

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[5] Additionally, the action initiated against Pardee by the Trustees sought accrued interest on the unpaid balance, liquidated damages, and attorneys' fees.

renounced any liability for his benefits, based on its position that the Coal Act was unconstitutional.

Upon consideration of cross-motions for summary judgment, the district court held the Coal Act to be constitutional, ruling that, as a "signatory operator," Pardee was indeed "liable for any deficiency, or entitled to any excess, in payments pursuant to the Hess assignment." Pardee Coal, 93 F. Supp. 2d at 708. However, the district court further concluded that the Coal Act mandates the SSA to have made its assignments before October 1, 1993. Because they were made after that date, the assignments of Bolling and Brewer were ruled to be "void as a matter of law." *See id.* The Trustees timely appealed the summary judgment granted to Pardee on this point, and we exercise jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.[6]

II.

This appeal presents an issue of statutory construction which, as a pure question of law, we review *de novo*. *United States v. Linney*, 134 F.3d 274, 282 (4th Cir. 1998). As such, we accord no deference to the district court's interpretation of the Coal Act.

III.

A.

The provisions of § 9706(a) include the specification that the SSA "shall" assign eligible beneficiaries to the proper coal operators "before October 1, 1993[.]" *See supra* note 4. The meaning and consequences of this section of the Coal Act constitutes the sole issue presented on appeal.

The district court, relying primarily on the Sixth Circuit's decision in *Dixie Fuel Company v. Commissioner of*

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[6] The United States, as *amicus curiae*, submitted a brief and presented oral argument in support of the Trustees.

Social Security, 171 F.3d 1052, 1062 (6th Cir. 1999), concluded that the Act unambiguously established October 1, 1993, as a jurisdictional mandate. *See Pardee Coal*, 93 F. Supp. 2d at 715-16.[7] It therefore accorded no deference to the contrary position adopted by the SSA, the agency empowered by Congress to administer the Act. *See id.* at 714 (citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984)); *see also Dixie Fuel*, 171 F.3d at 1064 ("Where the statute is clear, the agency has nothing to interpret and the court has no agency interpretation to which it may be required to defer. That is the case here."). We have arrived at the opposite conclusion: examined in accordance with the proper principles of construction, the Act clearly allows the SSA to exercise its assignment authority, including the authority to make new assignments, after October 1, 1993.[8]

B.

As the district court emphasized, the word "shall," when used in a statutory context, is generally construed to be

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[7] The Sixth Circuit is our only sister circuit to have addressed this issue. However, several district courts have considered the significance of the October 1, 1993 "deadline." Compare *Shenango Inc. v. Apfel*, No. 99-1035, *8 (W.D. Pa. July 25, 2000) (refusing to void assignments made after October 1, 1993), and *Five-J Energy, Inc. v. Apfel*, No. 97-172, *6 (N.D. W.Va. October 16, 1998) (same), *with King Knob Coal Co. v. Apfel*, No. 99-146, *12 (N.D. W.Va. September 29, 2000) (relying on the "clear and unambiguous language" of the Coal Act to conclude that "shall" constitutes a firm, jurisdictional deadline).

[8] In determining whether *Chevron* deference is warranted,.the first question is always whether Congress has directly spoken to the issue. *See* 467 U.S. at 842-43 ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."). Since we can divine a clear congressional intent, the issue of *Chevron* deference does not apply. However, if deference were warranted, it would have no impact on the resolution of this case, because the SSA's position is also the construction clearly intended by Congress.

mandatory. *See Pardee Coal*, 93 F. Supp. 2d at 714 (citing *United States v. Monsanto*, 491 U.S. 600, 607, 105 L. Ed. 2d 512, 109 S. Ct. 2657 (1989)); *see also Dixie Fuel*, 171 F.3d at 1061-62 (citing cases). However, as the Supreme Court has pronounced, statutory provisions imposing a mandatory duty on an agency to act before a specific date are not generally construed to remove the agency's power to act after that date. *See, e.g., Brock v. Pierce County*, 476 U.S. 253, 262, 90 L. Ed. 2d 248, 106 S. Ct. 1834 (1986); *see also United States v. Montalvo-Murillo*, 495 U.S. 711, 718, 109 L. Ed. 2d 720, 110 S. Ct. 2072 (1993) ("Although the duty is mandatory, the sanction for breach is not loss of all later powers to act."). In its Brock decision, the Supreme Court pronounced that a statutory provision that an agency "shall" perform certain functions within a prescribed period "does not, standing alone, divest the agency of jurisdiction to act after that time." 476 U.S. at 266. The Court expressed its reluctance to view "every failure of an agency to observe a procedural requirement [as] voiding subsequent agency action, especially when important public rights are at stake." *Id.* at 260.

In applying *Brock* -- that is, in determining when a statutory "deadline" is jurisdictional, rather then procedural – our circuit precedent is illuminating:

> Where a statutory deadline requiring that the government "shall" take certain action within a particular time frame fails to specify the consequences of the government's failure to comply with that deadline, courts should not assume from the statute's mandatory language itself that a jurisdictional requirement was intended, if a remedy for the government's noncompliance less drastic than dismissal is available. Rather, in such a context, they should examine the "normal indicia of congressional intent," to determine whether Congress meant the provision to be jurisdictional.

United States ex rel. Siller v. Becton Dickinson & Co., 21 F.3d 1339, 1344 (4th Cir. 1994) (citations omitted). Although

the Court in Brock refused to hold that "a statutory deadline for agency action can neverbar later action unless that consequence is stated explicitly in the statute[,]" 476 U.S. at 262 n.9, it is well-settled that, where such a consequence is not specified, "the federal courts will not in the ordinary course impose their own coercive sanction." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 63, 126 L. Ed. 2d 490, 114 S. Ct. 492 (1993).

Pardee suggests that *Brock* represents a narrow "public interest" exception to a general rule that "shall" is mandatory; here, Pardee urges, the public interest is not sufficiently compromised to warrant invoking the exception. *See* Appellees' Br., at 15. However, Pardee's position distorts the applicable precedent. The *Brock* "exception" is a recognized canon of construction which instructs against treating statutory timing provisions as jurisdictional, unless such a consequence is clearly indicated. *See, e.g., Hendrickson v. FDIC*, 113 F.3d 98, 101 (7th Cir. 1997) ("Standing alone, moreover, use of the word 'shall' in connection with a statutory timing requirement has not been sufficient to overcome the presumption that such a deadline implies no sanction for an agency's failure to heed it."); *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997) ("The law is well-established in this and other jurisdictions "that '[a] statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision.") (emphasis in original); *see also* 3 NORMAN J. SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION § 57.19 (5TH ED. REV. & SUPP. 2001) ("The general rule is that if a provision of a statute states a time for performance of an official duty, without any language denying performance after a specified time, it is directory [rather than jurisdictional].").

Thus, our task is to examine the text of the Coal Act and the context in which it was enacted to determine whether Congress plainly established October 1, 1993, as a firm

jurisdictional deadline. More specifically, we must discern whether Congress anticipated and intended that otherwise-valid assignments made after that date would be void – even if that meant that beneficiaries who could be assigned to specific operators would, on account of administrative inefficiency or understaffing,[9] be relegated to the unassigned beneficiary pool.

For the reasons explained herein, we conclude that neither the text nor the legislative history of the Coal Act reflects a clear congressional intent to extinguish the SSA's authority to assign beneficiaries after October 1, 1993. Established precedent militates against treating this "deadline" as jurisdictional. Moreover, to construe § 9706(a) as jurisdictional, as the district court did, would do violence to Congress's goal of ensuring that funding obligations be allocated to specific coal operators according to their actual, individual liability. Such a result also frustrates congressional intent by shifting financial obligations properly borne by private parties to the public fisc.[10]

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[9] Although the SSA was presented with the truly formidable task of assigning approximately 65,000 miners to their respective operators by October 1, 1993, *see* J.A. 88, no funds were appropriated for the task until July 2, 1993, *see id.* at 105. To assign those miners, the agency had to search each miner's records and reconstruct his employment history, and then match that history against the lists of signatory coal operators. *See id.* at 89. After the initial assignments had been made, the SSA embarked upon an extensive review process. In a statement to the House Ways and Means Committee (Subcommittee on Oversight), SSA Principal Deputy Commissioner Lawrence H. Thompson reported that as of June 22, 1995, the agency had received requests for review from 471 coal operators concerning assignments for 24,541 miners. *See id.* at 96.

[10] Pardee suggests that our decision in *Sigmon Coal Company v. Apfel*, 226 F.3d 291 (4th Cir. 2000), *cert. granted sub nom. Massanari v. Sigmon Coal Co., Inc.*, 121 S. Ct. 1652 (Apr. 23, 2001), precludes us from consulting the Act's legislative history in this situation. *See* Appellees' Br., at 16-17. To support this contention, it directs our attention to a recent decision in which the district court, relying on *Sigmon Coal*, speculated that we would "look no further than the clear and unambiguous language

1.

In conducting our textual analysis of the Coal Act, we are struck by the absence of any discussion of the consequences of the SSA's failure to complete its beneficiary assignments by October 1, 1993. The Act does not characterize untimely assignments as invalid, nor does it require that beneficiaries assigned after September 30, 1993, be placed into the unassigned beneficiary pool and remain forever unassigned. The Coal Act, in short, is entirely devoid of any provision that expressly divests the SSA of its authority to make adjustments or additions to the assigned and unassigned beneficiary pools in light of changed circumstances or newly obtained information.

These omissions are particularly salient in this case, given that the Supreme Court rendered its *Brock* decision in 1986, six years before enactment of the Coal Act. Congress is therefore presumed to have known that its directive that the SSA "shall" make assignments before October 1, 1993, would not be construed as depriving the agency of its authority to act after that date. *See, e.g., United States v. Wells*, 519 U.S. 482, 495, 137 L. Ed. 2d 107, 117 S. Ct. 921 (1997) ("We presume that Congress expects its statutes to be read in conformity with this Court's precedents[.]"). Had Congress intended to establish a jurisdictional bar to later assignments, it could have easily specified a consequence for the SSA's failure to comply with the statutory deadline. *See Brock*, 476 U.S. at 260 ("Courts should not assume that Congress intended the agency to lose its power to act."). As Judge Luttig observed in Becton Dickinson, the presence of the term "shall" is

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of the statute itself to conclude that the deadline of October 1, 1993[,] is a statutory deadline[.]" *See King Knob, supra note 7.*

Although, as *Sigmon Coal* observes, courts generally should not resort to legislative history if a statute's language is unambiguous, this is not such a case. While the meaning of § 9706(a) can be clearly ascertained through the use of traditional canons of construction, *see infra* Part III.B, its meaning cannot be derived from that section's literal language.

insufficient textual evidence to establish that Congress intended such a provision to be jurisdictional. *See* 21 F.3d at 1344.[11]

Echoing the Sixth Circuit's decision in *Dixie Fuel*, Pardee now contends that the consequences of delayed assignment are implicit in the statute as a whole. According to Pardee, the Act contemplates that the allocation of liability among the coal operators would be determined on the basis of pre-October 1, 1993 assignments, "connecting funding and premium calculations to the status of assignments as of October 1, 1993." Appellees' Br., at 13 (citing 26 U.S.C. § 9704(f)). Thus, asserts Pardee, "absent a specific figure representing the number of unassigned beneficiaries, the statutory scheme as a whole would be undermined." Appellees' Br., at 13-14.

Pardee's assertion in this regard is erroneous. Although § 9706(a) quite clearly directs the SSA to assign beneficiaries prior to October 1, 1993, the statutory scheme contemplates much more fluidity in assignments than Pardee acknowledges. Pardee emphasizes the interest in certainty, i.e., the interest in finalizing the allocation of liability among assigned operators, permitting them to know and rely upon their funding obligations. *See* Appellees' Br., at 24 ("Liabilities would be ascertainable in both the short and long terms, thereby freeing future transactions from the burden of unforeseeable events involving 'new' assignments coming from SSA at any point.").

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[11] Our *Becton Dickinson* decision went on to provide examples of language that would be sufficient to divest an agency of its jurisdiction. *See* 21 F.3d at 1344 (citing 28 U.S.C. § 2415(a), specifying that "every action for money damages brought by the United States . . . which is founded upon any contract . . . shall be barred unless the complaint is filed within six years," and 28 U.S.C. § 2415(b), specifying that "every action for money damages brought by the United States . . . which is founded upon a tort shall be barred unless the complaint is filed within three years . . .") (emphasis in original).

Importantly, however, the Act appears to subordinate the coal operators' interest, if any, in finalizing assignments by October 1, 1993, to the overriding interest in ensuring that such assignments are fair and accurate. Pursuant to § 9706(f), an assigned operator may request from the SSA Commissioner detailed information on the work history of any beneficiary assigned to that operator, and, if the operator believes the assignment to be incorrect, it may request review of the assignment. While such requests must be submitted to the Commissioner within specified time parameters,[12] the Act does not impose any parallel time constraints on the SSA's review process. The Act leaves such assignments -- and thus, the allocation of proportionate liability -- open indefinitely, subject to review and revision by the SSA. In light of these appeal provisions, Congress manifestly expected that beneficiary reassignments would be made after October 1, 1993, with the liability of assigned operators to be reapportioned commensurately.

Indeed, as the Trustees point out, "the number of unassigned beneficiaries has been changed on numerous occasions throughout the history of the Combined Fund, and the statute expressly contemplates that possibility." Appellants' Reply Br., at 9. In addition to its appeal provisions, § 9706(f) provides for beneficiary reassignment if and when an assigned operator is no longer "in business," and when there are no related persons who may assume the operator's obligations. *See* 26 U.S.C. § 9704(f)(2)(B). In order to deal with such adjustments, the Combined Fund uses an accounting method called "inception billing," which annually adjusts for the retroactive effects of adjusted beneficiary assignments. Thus, the Coal Act expressly provides that each operator's premium assessment will be

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[12] An assigned operator may, within 30 days of receiving notice with respect to a particular beneficiary, request information as to his work history. *See* 26 U.S.C. § 9706(f)(1). After receiving such information, the assigned operator has an additional 30 days in which to request review of the assignment. *See* 26 U.S.C. § 9706(f)(2).

recalculated at the beginning of every new plan year to reflect adjustments made to the beneficiary assignments. *See* 26 U.S.C. § 9704(f)(2).[13] These annual readjustments, mandated by the Act itself, would be antithetical to a statutory scheme designed, as Pardee maintains, to "fix" liability as of October 1, 1993.[14]

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[13] Section 9704(f) provides as follows:

For purposes of this section--

(1) In general.-- The term "applicable percentage" means, with respect to any assigned operator, the percentage deter mined by dividing the number of eligible beneficiaries assigned under Section 9706 to such operator by the total number of eligible beneficiaries assigned under Section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) Annual adjustments.-- In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignment as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A)).

[14] Concededly, the Act provides for adjustments necessitated when an operator successfully appeals an assignment or exits the coal industry, but never directly addresses the possibility that new assignments would be made on or after October 1, 1993. *See Dixie Fuel*, 171 F.3d at 1062. We believe, however, that the authority to make new assignments is implied by the flexibility of the statutory scheme. Had Congress wished to frame the adjustment provisions of § 9706(f) as exceptions to a general rule barring assignments after October 1, 1993, it could have done so, by simply employing one of several common conventions of statutory drafting. For example, it could have mandated that all assignments shall be made by October 1, 1993, "except as provided" in the appeal provisions of § 9706(f). *See, e.g., Acosta v. Louisiana Dept. of Health and Human Resources*, 478 U.S. 251, 254, 92 L. Ed. 2d 192, 106 S. Ct. 2876 (1986). Alternatively, Congress could have explicitly allowed the SSA to make

Put simply, nothing in the appeals provisions (§ 9706(f)) of the Act indicates that the SSA's authority to make revised assignments constitutes an exception to a general divestiture of authority as of October 1, 1993. Moreover, our adoption of such a construction would create irrational distinctions in the SSA's power to reevaluate its initial assignments. If an administrative review revealed that an assignment was based on a factual error, a misreading of the statute, or a simple mistake, the SSA could, under § 9706(f)(3)(A), reassign the beneficiary according to the criteria set forth in § 9706(a). However, under the district court's ruling, if the SSA erroneously concluded that a beneficiary was unassignable, but later (i.e., on or after October 1, 1993) received information connecting the beneficiary to an extant employer, the SSA would lack authority to make the appropriate assignment. In effect, Pardee's position, and the district court's ruling, would allow the SSA to reassign those beneficiaries who were initially assigned to the wrong operator, yet forbid the "reassignment" of beneficiaries who were initially assigned to no operator. We cannot accept that Congress intended the allocation of liability to rest on such a hollow distinction.[15]

2.

Since a congressional intent to establish October 1, 1993, as a jurisdictional deadline cannot be divined from the text of the Coal Act, we must proceed to an analysis of "other indicia of congressional intent." *See Becton Dickinson*, 21 F.3d at 1344. Therefore, as in *Becton Dickinson*, we must examine

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new assignments after an administrative appeal, "notwithstanding" the deadline set forth in § 9706(a). *See, e.g., Liberty Maritime Corp. v. United States*, 289 U.S. App. D.C. 1, 928 F.2d 413, 416-17 & n.4 (D.C. Cir. 1991).

[15] Indeed, depriving the SSA of its power to make beneficiary assignments on or after October 1, 1993, would have presented the agency with a perverse incentive to make a timely "rough cut," and then refine its assignments through the administrative review process.

the Coal Act's legislative history to determine whether Congress meant for the provision in question to be viewed as a jurisdictional requirement. *Id.* at 1344 n.5.[16]

As we have noted, Congress enacted the Coal Act in 1992 to ensure the long-term viability of the Benefit Plans, the funding of which had become precarious. The Act was predicated on Congress's express finding that:

> in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

26 U.S.C.A. § 9701 (note) (West Supp. 2001). Consistent with Congress's objective of "identifying persons most responsible for plan liabilities," *see id.*, the legislative history of the Coal Act reflects an effort to "insure that every

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[16] In *Becton Dickinson*, we registered some doubt as to whether courts should "resort to legislative history where Congress has not specified the consequence" of the agency's failure to meet a statutory deadline. *See* 21 F.3d at 1344 n.5. In its *Brock* decision, the Supreme Court looked to legislative history as among the relevant indicia of congressional intent. *See Brock*, 476 U.S. at 263-65. Some circuit courts, though, have treated the absence of a specified consequence in the statutory text as dispositive of congressional intent, *see* Becton Dickinson, 21 F.3d at 1344 n.5 (citing as example *St. Regis Mohawk Tribe, New York v. Brock*, 769 F.2d 37, 41 (2d Cir. 1985)), and the Supreme Court has at times invoked such language approvingly. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 63-64, 126 L. Ed. 2d 490, 114 S. Ct. 492 (1993) (citing *Brock* and *St. Regis Mohawk Tribe* for the proposition "if a statute does not specify a consequence for noncompliance . . . the federal courts will not in the ordinary course impose their own coercive sanction"). That said, the Supreme Court has never squarely adopted the position that jurisdictional consequences must be expressly stated -- and, in fact, has expressly declined to do so. *See Brock*, 476 U.S. at 262 n.9 ("We need not, and do not, hold that a statutory deadline for agency action can never bar later action unless that consequence is stated explicitly in the statute.").

reasonable effort is made to locate a responsible party to provide the benefits before the costs are passed to other signatory companies which have never had any connection to the individual[.]" 138 Cong. Rec. S17604 (daily ed. Oct. 8, 1992). To this end, the Conference Committee Report declared that the Act's "overriding purpose is to find and designate a specific obligor for as many beneficiaries in the [Benefit] Plans as possible." *Id.* The conferees further stated their "intention that the largest possible number of beneficiaries in the [Benefit] Plans be assigned to a specific or designated company[,]" and "that the number of unassigned beneficiaries is kept to an absolute minimum." *Id.* at S17605.

Although the legislative history indicates that October 1, 1993, was the date by which "assigned operator allocations . . . are required to be made," *see id.* at S17605, the paucity of references to this "deadline" is conspicuous and compelling. Equally conspicuous is the absence of any mention of beneficiaries who could be assigned according to the criteria contained in § 9706, but whose assignments might not be completed on a timely basis. We regard as especially revealing the explanation given for why certain beneficiaries would remain unassigned:

> As a practical matter, not all beneficiaries can be assigned to a specific last signatory operator, related person or assigned operator for payment purposes. This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses . . .

Id. (emphasis added). Elsewhere, the Conference Report frames the calculation of unassigned beneficiary premiums as a function of "the number of beneficiaries assignable to each operator as of October 1, 1993[,]" *id.* (emphasis added), or as the "beneficiaries in the Combined Fund who can be assigned to an operator (or related person) still in business[.]" *Id.* It is obvious from such statements that Congress expected the unassigned beneficiary pool to consist exclusively of "orphans" -- eligible beneficiaries who had been abandoned

by their former employers. The position of Pardee, however, would cause the unassigned pool to be filled with assignable beneficiaries, "orphaned," as it were, by administrative delay.[17]

Our examination of the Coal Act's legislative history convinces us that Congress intended the status of individual beneficiaries to depend not on the vicissitudes of bureaucratic action, but instead on the merits, i.e., whether an extant operator could be identified and held responsible. It is apparent that a central objective of the Act is to assign retired coal miners and their dependents to their respective employers whenever such a match is possible, and to allocate liability accordingly. This legislative objective corresponds closely to the Act's genesis and policy underpinnings -- and, crucially, to its funding scheme.

It must be recalled that the Act represents a legislative effort to stabilize funding of a private health care benefit plan. *See* 26 U.S.C.A. § 9701 (note) (West Supp. 2001) (the Act was enacted "to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of [the Benefit Plans.]") (emphasis added). The funding implications of the district court's decision and the position maintained by Pardee are significant. *Brock* indicated that it should not be presumed that Congress intended statutory deadlines to bar agency action to the detriment of the public fisc. *See* 476 U.S. at 260-

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[17] The Sixth Circuit, in its *Dixie Fuel* decision, characterized the Conference Report as "confirming the intent of Congress" to establish October 1, 1993, as a jurisdictional deadline. *See Dixie Fuel*, 171 F.3d at 1064. While it is true that the Coal Act -- and the Conference Report preceding its enactment -- calculates the premiums owed by individual operators on the basis of October 1, 1993 assignments, it is also clear that Congress expected such initial assignments to be revised and the premiums recalculated from time to time. *See* Part III.B.1, *supra*. In its examination of the Act's legislative history, *see* 171 F.3d at 1063-64, the Sixth Circuit failed to reconcile the extensive review and reassignment process with the notion that liability be fixed as of October 1, 1993.

61 (refusing to strip agency of its authority to act after the statutory deadline where "public rights are at stake" and agency delay "would prejudice the rights of the taxpaying public"). However, operators such as Pardee may avoid liability for individual beneficiaries -- and thus enjoy a proportionate reduction in their contributions for unassigned beneficiaries -- simply because some assignments were "untimely." This results in a financial windfall to certain coal operators, at the expense of other operators (whose assignments were completed before October 1, 1993), and, more importantly, the public interest.

While premiums for the assigned beneficiaries are paid entirely by coal operators, the premiums for the unassigned beneficiary pool are funded by an initial transfer of $210 million from the 1950 UMWA Pension Plan to the Combined Fund, followed, in the plan year beginning October 1, 1995, by annual transfers of up to $70 million earned in interest on the balance of the AML Fund. *See* 26 U.S.C. § § 9704(b), 9705.[18] In the event that such transfers are insufficient to fund the premiums for unassigned beneficiaries, the Coal Act also provides for the assessment of additional contributions from the signatory operators and related persons, based on each operator's proportionate share of all assigned beneficiaries. *See* 26 U.S.C. § 9704(d) & (f).

To date, transfers of public monies from the AML Fund have been adequate to cover the unassigned beneficiary premiums, obviating the need to exact pro rata contributions from the assigned coal operators. Indeed, as of November 30, 2000, over $336 million had been transferred from the AML Fund to the Combined Fund to subsidize the health care

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[18] Established under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1231(a), the AML Fund is financed by fees collected on each ton of coal sold, used, or transferred in the United States. With the exception of annual appropriations to the Combined Fund to defray the costs associated with orphan retiree benefits, the AML Fund is dedicated to restoring abandoned and inadequately reclaimed mining areas. *See* 30 U.S.C. § § 1232, 1233.

premiums of unassigned beneficiaries. *See* Declaration of Robert J. Ewing, Asst. Dir. of Finance and Administration for the Office of Surface Mining Reclamation and Enforcement (Dec. 21, 2000). While such transfers are explicitly authorized under the Act, they also represent funds diverted from the important public purpose of reclamation projects to rectify the serious threats posed to public health and safety by abandoned coal mines.[19] Congress could not and did not intend the AML Fund interest to be unnecessarily depleted on account of simple administrative delay by the SSA. To excuse the financial obligations of coal operators, where liability is both identifiable and identified, would frustrate the text, purpose, and legislative history of the Act.

IV.

Having analyzed both the text and legislative history of the Coal Act, we are unable to discern a clear congressional intent to establish October 1, 1993, as a jurisdictional deadline, rendering void all beneficiary assignments made by the SSA after that date. In this case, well-settled principles of statutory construction militate against regarding the timing provision in § 9706(a) as jurisdictional.

We accordingly reverse the district court insofar as it invalidated the Bolling and Brewer assignments, and we remand for further proceedings consistent with this opinion.

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[19] The magnitude of the nation's reclamation needs is alarming. It is estimated that over $2.6 billion of coal-related health, safety, property and general welfare problems remain to be rectified, including "nearly 730 miles of dangerous, unstable man-made cliffs ("highwalls"), 5,200 portals and vertical openings, 10,000 acres of dangerous piles and embankments, over 7,200 acres of subsidence problems, and over 2,400 pieces of hazardous equipment and facilities." *See* Testimony of Kathy Karpan, Dir. of the Office of Surface Mining, Before the Senate Committee on Government Affairs (Subcommittee on Oversight, Restructuring and the District of Columbia) (Oct. 6, 1998). Additionally, over 8,000 miles of streams have been damaged by acid mine drainage, killing fish and wildlife and threatening the potable water supply of numerous communities (especially in Appalachia). *See id.*

REVERSED AND REMANDED

DISSENT BY:
NIEMEYER

DISSENT:

NIEMEYER, Circuit Judge, dissenting:

The Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. § 9701 *et seq.*, requires "signatory operators" to pay to the United Mine Workers of America Combined Benefit Fund (the "Combined Fund") specified healthcare premiums for retired coal miners who have been "assigned" to the signatory operators by the Commissioner of Social Security. *See id.* § 9704. The amount of premiums payable by a signatory operator is fixed by the number of retirees assigned to the signatory operator under § 9706. *See id.* § 9704(b)(1). And section 9706(a) provides, in relevant part, that the Commissioner of Social Security "shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator." (Emphasis added). If not so assigned, the retirees must nevertheless be paid benefits by the Combined Fund from its funds. *See id.* § 9703.

In this case, the Commissioner of Social Security purported to assign retired miners Grover Bolling and Orvil Brewer to Pardee Coal Company roughly two years and four years, respectively, after the deadline for assignments imposed by Congress. Bolling was assigned to Pardee on September 20, 1995, and Brewer, on September 22, 1997. Pardee refused to pay these retirees' premiums because the retirees' assignment to Pardee was untimely. The district court agreed with Pardee, and I would affirm.

Because these assignments did not comply with the statutory deadline imposed by the Coal Act for the assignment of retirees to signatory operators, the assignments may not be charged to the signatory operator. *See Dixie Fuel Co. v.*

Comm'r of Soc. Sec., 171 F.3d 1052, 1063-64 (6th Cir. 1999). The Sixth Circuit in *Dixie Fuel*, after explaining why the statutory deadline is important to the calculation of the obligations of every signatory operator, concluded that the courts were not free to ignore Congress' deadline. The court stated:

> By specifying in the statute that "the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree . . . to a signatory operator," and by resting the entire scheme for calculation of premiums of the assignments made as of that date, Congress did speak directly and unambiguously on the issue of when the Commissioner's authority to make those assignments expired. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."

171 F.3d at 1063 (*quoting Chevron v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984)).

The majority opinion seeks to adjust the financial equities of the Coal Act by judicial mandate, and in doing so, it ignores the statutory deadline unambiguously stated by Congress in the Act. In addition, this approach creates an unnecessary circuit split with the Sixth Circuit's decision in *Dixie Fuel*. Because I agree with *Dixie Fuel's* conclusion that we must follow the plain, unambiguous language of the Coal Act, I respectfully dissent.

APPENDIX B

CIVIL ACTION NO. 98-110-A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA,
ABINGDON DIVISION

Michael H. Holland, *et al.*,
Plaintiffs,

v.

Pardee Coal Company, Inc., *et al.*,
Defendants.

April 7, 2000, Decided

April 7, 2000, Filed;

April 7, 2000, Entered

COUNSEL:
For Plaintiff: PETER BUSCEMI, WASHINGTON, DC.

For Plaintiff: JOHN ELLSWORTH KIEFFER, BRISTOL, VA.

For Defendant: DANIEL R. BIEGER, ABINGDON, VA.

For Defendant: MARY LOU SMITH, WASHINGTON DC.

JUDGES:
Glen M. Williams, SENIOR UNITED STATES DISTRICT JUDGE.

OPINIONBY:
Glen M. Williams

OPINION:

MEMORANDUM OPINION AND ORDER

I. THE CASE AND CONTROVERSY.

The Plaintiffs, trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund"), filed suit in this court setting forth allegations that the Defendants, current or past coal operators and related parties, are jointly and severally liable for unpaid health care premiums for certain assigned beneficiaries (retired coal miners) of the Combined Fund. The Combined Fund is a trust fund created by Congress under the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act") to provide health and death benefits to retired coal miners and their dependents.

There are three assignments made to the principal Defendant, Pardee Coal Company, that are contested here. In a letter dated September 28, 1993, Pardee received notice of its responsibility for the assignment of Curtis Hess. (Mem. Supp. Defs.' Mot. Summ. J. at 14.) In two other letters dated September 20, 1995 and September 22, 1997, Pardee received similar notices of assignment for Grover Bolling and Orvil Brewer, respectively. *Id.* The Plaintiff trustees claim that the Combined Fund has paid out $86,102.62 in health care claims on behalf of these three beneficiaries. (Pls.' Mem. Supp. Mot. Summ. J. at 9.) From October 1, 1993 through June 25, 1999, Pardee made partial payments to the fund in the amount of $28,604.19. (*Id.* at 9-10; Mem. Supp. Def.'s Mot. Summ. J. at 14.) Pardee now counterclaims for the payments already made, (Mem. Supp. Def.'s Mot. Summ. J. at 14), and the trustees claim the balance of $57,498.43, as well as accrued interest, liquidated damages and attorneys' fees. (Pls.' Mem. Supp. Mot. Summ. J. at 8, 16-17.)

Upon consideration of each party's motion for summary judgment, the court makes the following rulings respecting the various claims and contentions of the parties: i) Pardee Coal Company was a "me too" signatory to the 1978 National Bituminous Coal Wage Agreement; ii) the Coal Act requires

the assignments to be made no later than October 1, 1993; and iii) the Coal Act is constitutional. Therefore, the Bolling and Brewer assignments are void as a matter of law. However, the Hess assignment is binding on Pardee and Pardee is liable for any deficiency, or entitled to any excess, in payments pursuant to that assignment. Furthermore, the Defendants are jointly and severally liable for any deficiency. A final judgment as to the Plaintiffs' claim for fees, costs and liquidated damages must await a determination as to whether Pardee has "an obligation to pay" a deficiency as required by 26 U.S.C. § 9721 (West Supp. 1999). Accordingly, each party is entitled to a partial summary judgment that gives full effect to this opinion.

A. THE POSITION OF THE DEFENDANTS

The Defendants deny liability on the following four grounds: i) the assignments were untimely when made and are thus void as a matter of law; ii) the principal defendant Pardee Coal Company was never a "signatory operator" as required for Combined Fund liability under the Coal Act; iii) the additional Defendants, even if they are "related parties" under the Coal Act, are not jointly and severally liable; and iv) the current funding mechanism for the Combined Fund established by the Coal Act is unconstitutional under the Fifth Amendment.

The Defendants claim the assignments were untimely because they were made after October 1, 1993, as set forth in the Coal Act as the date by which the Social Security Administration shall make its initial assignments. This, the Defendants assert, was a final date after which no further assignments could be made. Furthermore, the Defendants contend that the assignments are void because they were not signatories to the National Bituminous Coal Wage Agreement of 1978 ("1978 NBCWA") and thus are not liable for the subsequent revisions to the agreement which, under the Coal Act, ultimately established the funding provisions of the Combined Fund. To be liable, the operator must be a signatory to a coal wage agreement.

Moreover, the argument continues, the Defendants named in addition to the principal defendant, Pardee Coal Company, cannot be liable if the assignments to Pardee are void because claims against "related persons" are derived from the underlying claim and cannot stand alone. In addition, the additional Defendants claim that they neither employed the assigned individuals, nor were responsible in any way for the circumstances giving rise to the need for the legislative response embodied by the Coal Act. As a result, they deny both individual and joint and several liability for any contributions to the Combined Fund.

The final claim put forth by the Defendants is that the funding provision of the Coal Act is unconstitutional under a recent United States' Supreme Court decision, *Eastern Enterprises v. Apfel*, 524 U.S. 498, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998), and that the offending provision is not severable from the Act as a whole. As a result of the lack of severability, the Defendants argue that the entire Act must be struck down. In the alternative, the Defendants ascribe the Coal Act as unconstitutional in its application to them.

B. THE POSITION OF THE PLAINTIFFS

The Plaintiffs countervail that October 1, 1993 merely represented a congressional goal for completing the assignments, if possible, but in no way suspended agency power to make subsequent assignments. (Reply Mem. Supp. Pls.' Mot. Summ. J. at 23.) As support, the Plaintiffs cite a number of cases establishing that the passage of a statutory deadline does not necessarily end an agency's power to act where important public interests are at stake. *Id.*; *see e.g.*, *Brock v. Pierce County*, 476 U.S. 253, 90 L. Ed. 2d 248, 106 S. Ct. 1834 (1986).

The claimed interest here is ensuring that liability for the future health care of coal industry retirees be allocated to the responsible parties, the coal operators that formerly employed the miners. To date, nearly 10,000 beneficiaries have been assigned after October 1, 1993. (Reply Mem. Supp. Pls.' Mot.

Summ. J. at 5, 32-34.) A ruling that assignments made after this date are void, the argument goes, would utterly frustrate the congressional purpose of the Coal Act because those assignees would then become part of the unassigned pool, whose benefits would be paid by unrelated entities who had no responsibility for the beneficiary. Thus, Congress could not have intended that October 1, 1993 be the final date for assignments under the Act.

The Plaintiffs further maintain that the assignments were not only timely, but binding on Pardee Coal Company as well because of its status as a signatory operator under the Coal Act. By the Plaintiffs' account, Pardee is, by its own admission, a signatory because it negotiated a wage agreement in 1978 that was essentially identical to, and incorporated by reference, the terms of the 1978 NBCWA. (Reply Mem. Supp. Pls.' Mot. Summ. J. at 11 (citing Mem. Supp. Def.'s Mot. Summ. J. at 14).)

In addition, relying on what the Plaintiffs believe to be a plain reading of the Coal Act, all of the Defendants are "related persons" because they are either successors in interest to the principal defendant Pardee Coal, or they are corporations existing under common control, and as a result, are jointly and severally liable for the assigned obligations to the Combined Fund.

Finally, the Plaintiffs disagree with the Defendants' interpretation of the Eastern holding. Eastern, according to the Plaintiffs, is a narrow holding specifically addressed to the unique facts of that case and is applicable only in subsequent cases that involve similarly situated parties. Accordingly, the Plaintiffs' position is that the facts of the case at bar are far too dissimilar to Eastern for it to represent controlling precedent over this matter.

II. HISTORY OF THE COAL ACT

The great history of America's coal industry is unfortunately imbrued with bloodshed and human tragedy. The portrait of the working and living conditions of the

Nineteenth and early Twentieth Century coal miner is an appalling scene indeed. The miner's every workday was fraught with dangers of both a direct and indirect nature. On-the-job deaths and injuries by the tens of thousands resulted from methane explosions, cave-ins and other innate hazards of the occupation. Unknown to the early miner, a far more insidious but no less families endured a stark, pallid and insecure existence. The miners earned very low wages, and due to the rural nature of the mining industry, it was often necessary for miners to live in company towns where the mine operators essentially owned and controlled everything from the stores where the miners purchased necessities to the houses and apartments in which the families lived. In addition to low wages and unusually long work days, such absolute dependence on the mining companies forced miners to endure exorbitant and disproportionate prices for goods, sub-par company-provided physicians, and even arbitrary evictions from company housing into tent colonies for simply speaking out or displaying any civil disobedience to the omnipotent authority of the coal barons.

From this oppression arose the need for miners to form a collective voice that would enable them to bring about the fundamental changes necessary to offer the mining family an opportunity to a decent way of life. In 1890, the United Mine Workers of America ("UMWA") was born to effectuate this change. Unfortunately, early attempts at collective bargaining between operators and the UMWA often more closely resembled a battlefield than a stage of negotiation. Now infamous clashes, the Lattimer Massacre, the Ludlow Massacre, Matewan, Blair Mountain, Paint Creek and Bloody Harlan, name but a few of the events in which scores of people lost their lives through violent outbursts against the other by both UMWA members and the coal operators.

Empowered by the National Industry Recovery Act, by 1933 the UMWA occupied a formidable presence in the politics of organized labor, a presence it maintains to this day. In the 1940s, miner's health care became the UMWA's

ultimate concern. *Eastern Enterprises v. Apfel*, 524 U.S. 498, 505, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998). A fallout in health care negotiations between the mine operators and the UMWA led to a national coal miner strike in 1946 that required Presidential intervention. By executive order, President Truman ordered the Secretary of the Interior to take control of the mines and negotiate suitable terms of employment for the miners. 11 Fed. Reg. 5593 (1946); Eastern Enterprises, 524 U.S. at 505.

Following a week of negotiations, the parties reached an agreement that ultimately lead to the National Bituminous Coal Wage Agreement of 1947 ("1947 NBCWA"). *Eastern Enterprises* 524 U.S. at 505-06. This agreement created the UMWA Welfare and Retirement Fund ("1947 W & R Fund") that provided for medical and pension benefits for miners and their families through royalties collected on coal production. Despite the agreement, unrest continued between the parties over the scope and amounts of coverage, leading to a new agreement in 1950. The 1950 NBCWA created a multi-employer trust fund, the 1950 W & R Fund, funded by a fixed, per-ton royalty ($.30) on each ton of coal produced. *Id.* at 506. The new agreement gave the fund's trustees the authority to administer the trust in such a way as to secure its fiscal viability. Responding to the UMWA's now powerful bargaining position in the industry, the mine operators formed their own organization the following year, called the Bituminous Coal Operators Association ("BCOA"). *Id.*

In 1974, the BCOA and UMWA negotiated a new agreement in order to comply with the pension funding provisions of the newly passed Employee Retirement Income Security Act ("ERISA"). *Id.* at 509. The 1974 NBCWA established four trusts, two of which, the 1950 Benefit Plan and the 1974 Benefit Plan, are relevant here. The 1950 Benefit Plan provided post-retirement health care benefits for miners' retiring before January 1, 1976, while the 1974 Benefit Plan provided coverage for active miners and future retirees. *Id.* Thus, the 1974 NBCWA between the UMWA

and the BCOA was the first agreement providing for post-retirement healthcare benefits for miners. *Id.*

The royalties required for funding the Benefit Plans under this new agreement remained unchanged from the 1950 NBCWA, however, and that would soon prove problematic as dramatically increased the numbers of eligible recipients. In addition, reductions in coal production and ever-increasing health care costs decreased the available funds resulting in a funding crisis. The parties met to address the crisis, negotiating the 1978 NBCWA whereby each signatory operator agreed to assume the fiscal responsibility for health care claims brought by those miners the operator actually employed then or at some time in the past. *Id.* at 510. Those miners whose employers had since gone out of business remained covered under the 1974 NBCWA. *Id.*

Notwithstanding the attempts to alleviate fiscal difficulties, financial conditions worsened as mine operators began to abandon the Benefit Plans. As more and more operators pulled out, the obligations on those that remained continually increased. In 1988, the UMWA and BCOA met to remedy this situation, imposing liability on withdrawing operators. *Id.* at 511. However, when Pittston Coal Company refused to sign the agreement, an eleven-month strike ensued that prompted Elizabeth Dole, the Secretary of Labor at that time, to intervene and negotiate a settlement. *Id.*

The settlement established a bipartisan commission ("Coal Commission") to examine the Benefit Plans' financial condition and to make recommendations for change that would ensure the long-term fiscal viability of health care for miners. *Id.* The Coal Commission found that miners were entitled to the health benefits that mine operators had promised to them in the past and that the obligations for health care costs should be imposed on current and former signatories to a NBCWA. *Holland v. Keenan Trucking Co.*, 102 F.3d 736, 739 (4th Cir. 1996).

Acting upon the Coal Commission's recommendations, Congress passed the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), Pub. L. No. 102-486, 106 Stat. 3036 (codified as amended at 26 U.S.C. § § 9701-9722 (West Supp. 1999)). *Id.* The Coal Act formed the United Mine Workers of America Combined Benefit Fund by merging the pre-existing 1950 and 1974 Benefit Plans. 26 U.S.C. § 9702(a)(2). The provided benefits remained unchanged but the funding provisions were dramatically revamped and have led to volumes of litigation since, including the case at hand.

As referred to earlier, NBCWAs prior to 1978 relied on operational royalties, paid on a per-ton production basis, for health care funding. However, following the 1978 NBCWA and under the Coal Act, individual mine operators became liable for specific, assigned beneficiaries. *Cf. Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1128 (4th Cir. 1996). Congress did so in order to place funding responsibilities on the "persons most responsible for plan liabilities." *Id.* In other words, Congress intended to extend liability to those who fostered miners' expectations of life-long benefits and who benefitted from the concession made by the miners during dispute negotiations in exchange for that promise. *Id.* at 1129.

Accordingly, Congress required "signatory operators" who were still "in business" and who employed a particular beneficiary in the past to assume liability for the future health care of that beneficiary. 26 U.S.C. § 9706; *Carbon Fuel Co.*, 100 F.3d at 1128. A signatory operator is a company that signed any previous coal wage agreement. § 9701(c)(1); Carbon Fuel Co., 100 F.3d at 1128. The operator is still "in business" if the company presently generates revenue from any source, coal related or not. § 9701(c)(7); *Carbon Fuel Co.*, 100 F.3d at 1128.

Furthermore, previous employment of a coal industry retiree by a signatory operator is considered as employment by any "related person" to that operator. § 9706(b)(1). A related person is a member of a controlled group of

corporations that includes the signatory operator, any business under common corporate control with the signatory operator, or any other person having a partnership interest with the signatory operator in a coal related business, but only with respect to eligible beneficiaries. § 9701(c)(2)(A). Related parties are jointly and severally liable for assignments under the Act. § 9711(c).

Finally, all signatory operators were to assume a proportionate share of the liability for "orphaned retirees," those retired miners whose employers had gone out of business and left no related parties to which the miner could be assigned. § 9704(d).

Congress placed the responsibility for assigning beneficiaries on the Social Security Administration ("SSA"). § 9706(a). The Act mandated that the Commissioner shall assign each eligible coal industry retiree to a signatory operator by October 1, 1993. *Id.* The priority of assignment required that the SSA first attempt to assign the retiree to the operator who was a signatory to the 1978 Wage Agreement or any subsequent agreement, and was the most recent signatory operator to employ the retiree for at least two years. §9706(a)(1).

If the retiree could not be so assigned then the SSA was to assign the retiree to an operator who was a signatory to the 1978 Wage Agreement or any subsequent agreement, and was the most recent signatory operator to employ the retiree for any length of time. § 9706(a)(2). If the retiree could not be assigned under either paradigm above, then assignment would be to the signatory operator who employed the retiree for the longest period prior to the 1978 Wage Agreement. § 9706(a)(3). This final funding provision, the "reach-back" provision, theoretically could impose retroactive liability for activities that occurred several decades prior to the implementation of the Coal Act's assignment scheme. Because of its retroactive nature, the "reach-back" provision has been challenged repeatedly under the Takings and Due Process Clauses of the Fifth

Amendment, and in a limited sense, the case at bar is no exception.

III. LEGAL ANALYSIS

Both parties to this case have moved for summary judgment. Summary judgment must be granted whenever the evidence presented shows that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). When applied, rule 56 narrows this case to just three issues: i) was Pardee a "signatory operator" as defined by the Coal Act; ii) did October 1, 1993 represent the final day for making assignments under the Act; and iii) is the Coal Act itself constitutional? For reasons set forth below, the court holds that each of these questions must be answered in the affirmative.

A. WAS PARDEE A SIGNATORY OPERATOR?

Pardee claims that it was not a signatory to the 1978 National Bituminous Coal Wage Agreement because it did not sign the "actual" NBCWA, but only the appendix. (Mem. Supp. Def.'s Mot. Summ. J. at 4-5.) This determination is of paramount importance because in order to be assigned a beneficiary under the Coal Act, Pardee must have been a signatory to a coal wage agreement. 26 U.S.C. § 9701, 9706. Moreover, Pardee argues, it was never a member of the BCOA (the organization responsible for negotiating on behalf of the industry since 1951) and thus was never privy to the discussions that led to the 1978 NBCWA; it was not provided any documentation of that agreement; and it never signed any amendment to the 1978 agreement with the UMWA.

However, the court cannot agree with Pardee's position. The determination of Pardee's signatory status, in part, naturally flows from this classic contract question: As of the signing of the appendix in 1978, what were the intentions and expectations of Pardee and the UMWA? An overwhelming cornucopia of legal authority favors the Plaintiffs on this issue.

Following the Pittston strike of 1988-89, the Coal Commission determined that coal miners were promised lifetime health care benefits under previous coal wage agreements and that the miners traded lower pensions for those promises. *Eastern Enterprises v. Apfel*, 524 U.S. 498, 511-12, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998) (*citing Coal Comm'n Report, Executive Summary vii 1324*); *see, e.g.*, *Unity Real Estate Co. v. Hudson*, 178 F.3d 649, 664 (3d Cir. 1999) (stating that the threshold issue when determining signatory status is what reasonable expectations the coal companies' actions created in miners and that the expectation need not be explicit and could arise from a consistent course of past conduct); *Davon, Inc. v. Shalala*, 75 F.3d 1114, 1124-25 (7th Cir. 1996) (stating that it is rational to conclude that a legitimate expectation of lifetime health benefits under the Coal Act arose from the actions of every signatory operator who participated in the development of the multi-employer health benefit plans that have provided those same benefits for over fifty years).

The previous coal wage agreements referred to in the Coal Commission's findings date all the way back to the 1940s. Despite never mentioning, explicitly, lifetime benefits until 1974, every coal wage agreement contributed to an expectation of a continuous mechanism by which such benefits would be maintained. *In re Blue Diamond Coal Co.*, 79 F.3d 516, 523 (6th Cir. 1996) (*citing Davon*, 75 F.3d at 1125). It is undisputed that Pardee did sign a coal wage agreement after 1974 and prior to the Commission's findings. (Mem. Supp. Def.'s Mot. Summ. J. at 4.) Accordingly, it seems unreasonable for Pardee to suggest now that the lifetime health care benefits provided for in the 1978 NBCWA were never contemplated or expected by the parties under its "agreement" even if the court were to accept the subtle distinctions that Pardee attempts to make as to its signatory status. *Cf. Davon*, 75 F.3d at 1124-25 (stating that every NBCWA [since the 1940s] created a continuous mechanism for providing health benefit plans). Pardee's signature to the Appendix of the 1978 NBCWA is convincing

evidence that, at the very least, Pardee intended to be bound by the terms of that agreement and that in signing, Pardee created an expectation of such in its employee miners.

Furthermore, the court finds that Pardee was a "me too" signatory to the 1978 NBCWA. A "me too" agreement is generally defined as an agreement that allows smaller employers to obtain the benefits of a national collective bargaining agreement without being a member in an industry association or incurring the costs of independent negotiation. *Arizona Laborers, Teamsters and Cement Masons Trust Fund v. Conquer Co.*, 753 F.2d 1512, 1518 (9th Cir. 1985). "Me too" agreements also generally contain terms identical to those contained in the national agreement making no distinctions in the rights and liabilities of the respective signatories. *Connors v. Coal Link Co.*, 297 U.S. App. D.C. 273, 970 F.2d 902, 903(D.C. Cir. 1992). Consequently, the difference between a BCOA member and a "me too" signatory to a NBCWA is of no significance. *Anker Energy Corp. v. Consolidation Coal Co.*, 177 F.3d 161, 172 n.4 (3d. Cir. 1999).

The Defendants admit that Pardee signed "a Collective Bargaining Agreement ("1978 Wage Agreement") which was identical in all relevant respects to the 1978 National Bituminous Coal Wage Agreement executed by the United Mine Workers of America and [the] BCOA." (Mem. Supp. Def.'s Mot. Summ. J. Ex. A P 2.) Pardee's director signed, on Pardee's behalf, a document entitled: "Appendix 1978 National Bituminous Coal Wage Agreement." (Pls.' Mem. Supp. Mot. Summ. J. Ex. B, tab 1.) The date of signature on the Appendix is March 28, 1978, *id.*, exactly three days after the "actual" 1978 NBCWA was signed by the BCOA and UMWA, and one day after it took effect. (Mem. Supp. Defs.' Mot. Summ. J. at 4.)

While the Defendants repeatedly refer to a separate 1978 Agreement other than the 1978 NBCWA, evidence of this agreement is no where to be found. In fact, the Defendants direct the court to the 1978 NBCWA to explain the terms of

this purported separate agreement. *Id.* Pardee paid $1.3 million into the trust funds, created under the 1974 NBCWA and incorporated by reference into the 1978 NBCWA, beginning March 28, 1978, the day Pardee signed the Appendix, and ending June of 1980. Pardee's "agreement" expired on March 27, 1981. *Id.* at Ex. A P 4. Not surprisingly, the 1978 NBCWA expired the exact same day.

The foregoing leaves the court with the inescapable conclusion that Pardee was a "me too" signatory to the 1978 NBCWA and is thus subject to the assignment of beneficiaries under any of the three priority of assignment prongs provided by the Coal Act of 1992. Furthermore, the other named Defendants are "related parties" under the Coal Act. Under § 9701(c)(2)(A)(i), a corporate entity is a "related person" to a signatory operator if both are members of a controlled group of corporations as set forth in the Internal Revenue Code ("IRC").

IRC section 1563(a) states that a controlled group exists if five or fewer persons own stock possessing at least eighty percent of the total value of corporate stock in each sister company. All of the named Defendants in this case are within a controlled group of corporations given the statute's meaning. Each company here is 100 percent owned by the same four individuals. All four are from the same family. This is exactly the type of interrelatedness referred to by the Fourth Circuit in imposing joint and severally liability on several corporations owned by a married couple in *Holland v. Keenan Trucking Co.*, 102 F.3d 736, 742-43 (4th Cir. 1996). Thus, all the named Defendants in this case are jointly and severally liable for any valid obligations assigned to Pardee.

B. WAS OCTOBER 1, 1993 THE FINAL DAY FOR MAKING ASSIGNMENTS UNDER THE COAL ACT?

When reviewing an agency's statutory interpretation, a Court must first consider whether Congress has directly and precisely spoken on the issue. *Chevron U.S.A. v. Natural*

Resources Defense Council, 467 U.S. 837, 842, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1983). If so, that is the end of the matter. *Id.* The Coal Act provides that the Commissioner of the Social Security Administration "shall," before October 1, 1993, assign each coal industry retiree who is eligible. 26 U.S.C. § 9706(a). The Supreme Court has time and time again held that the word "shall," when used in a statutory context, is unmistakably mandatory in its meaning, *see, e.g., United States v. Monsanto*, 491 U.S. 600, 607, 105 L. Ed. 2d 512, 109 S. Ct. 2657 (1989), with a notable exception.

The Supreme Court stated in *Brock v. Pierce County*, 476 U.S. 253, 262, 106 S. Ct. 1834, 90 L. Ed. 2d 248 (1986) that the word "shall," standing alone, does not terminate agency action following the expiration of a statutorily prescribed date. Cf. *General Motors v. United States*, 496 U.S. 530, 541- 42, 110 L. Ed. 2d 480, 110 S. Ct. 2528 (1990); *United States v. Montalvo-Murillo*, 495 U.S. 711, 718, 109 L. Ed. 2d 720, 110 S. Ct. 2072 (1990). Underlying this exception is the "great principle of public policy . . . which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." *Brock*, 476 U.S. at 260.

However, there is no substantial prejudice to public interests in requiring that the Social Security Commissioner make the assignments called for by the Coal Act by October 1, 1993. The Plaintiffs cite *Five-J Energy v. Apfel*, No. 1:97CV172, mem. op. at 5-7 (N.D. W. Va. Oct. 16, 1998) as demonstrative of its argument. There, the court held that because the Coal Act does not provide for the funding of benefits for those retired miners whose assignment came late, then hundreds of miners and their dependents will be without health care benefits and resigned to the public dole. If that were true, then this opinion might have turned out differently. However, the court's finding in that case is simply wrong.

Under the Coal Act, as conceded by the Plaintiffs at oral argument and in court briefs, those eligible beneficiaries whom the Commissioner does not assign by October 1, 1993

become unassigned beneficiaries whose health care premiums will be paid from the unassigned pool. 26 U.S.C. § 9704(d); *Dixie Fuel Co. v. Commissioner of Soc. Sec.*, 171 F.3d 1052, 1062 (1998); (Reply Mem. Supp. Pls.' Mot. Summ. J. at 26.). Therefore, the health care costs of the parties in this case will ultimately be paid even if the assignments to Pardee are voided by this court.

Furthermore, each assigned operator's calculated premium includes a portion allocated to cover that operator's proportional share of funding liability for the unassigned pool. § 9704(d). Such an allotment of liability for unassigned operators could not prejudice the public interest asserted by the Plaintiffs, namely that future health care be paid by the responsible parties, especially in light of the fact that "every signatory operator shared some responsibility in creating a legitimate expectation among miners of lifetime health benefits." *Davon, Inc. v. Shalala*, 75 F.3d 1114, 1124 (7th Cir. 1996).

Moreover, the court adopts the Sixth Circuit's findings in the Dixie Fuel case that "shall," as used in the Coal Act, does not "stand alone." 171 F.3d at 1062. The Sixth Circuit found that the entire statutory scheme for the operation of the Combined Fund reflects a congressional intent that the assignments be completed by October 1, 1993. *Id.* The examples cited as support for that finding are convincing.

First, the Coal Act specifically defines two distinct categories of beneficiaries of the Combined Fund: assigned beneficiaries and unassigned beneficiaries. §9701(c)(5) (defining "assigned operator"); §9704 (establishing as part of the liability of assigned operators, a proportional share of the health care costs of the pool of "unassigned" beneficiaries); *Dixie Fuel*, 171 F.3d at 1062. Second, the total liability of assigned operators depends, not insignificantly, upon a determination of the total number of unassigned beneficiaries. § 9704(d); *Dixie Fuel*, 171 F.3d at 1062.

Third, that portion of the liability of an assigned operator for unassigned beneficiaries, known as the "unassigned beneficiaries premium," arises by dividing the number of beneficiaries assigned to that operator by the number of all assigned beneficiaries, multiplied by the number of unassigned beneficiaries. This repeated dichotomy of assigned versus unassigned beneficiary status significantly undermines the Plaintiffs' argument that Congress did not intend to establish October 1, 1993 as the final date for making assignments under the Act. A natural reading of the Coal Act, in conjunction with the funding scheme referenced above, leads the court to the conclusion that Congress meant for the Commissioner to assign beneficiaries by October 1, 1993, reducing the remainder to the unassigned beneficiary pool.

C. IS THE COAL ACT CONSTITUTIONAL?

The Defendants claim that the funding provisions for the Combined Fund under the Coal Act violate both the Due Process and Takings Clauses of the Fifth Amendment of the United States' Constitution. More specifically, they claim that since the Supreme Court struck down the "reach-back" provision, and since the "reach-back" provision is not severable from the Act, the entire Act must be struck down as unconstitutional. The foundation for this claim comes from the Supreme Court's holding in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 141 L. Ed. 2d 451, 118 S. Ct. 2131 (1998).

In *Eastern Enterprises*, however, five justices unequivocally stated that constitutional challenges to the funding provisions of the Coal Act must be analyzed under the Due Process Clause and its principles of fundamental fairness.[1] 524 U.S. at 539, 556. That is the only relevant rule

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[1] The Supreme Court was sharply divided in *Eastern Enterprises*. The plurality, consisting of Justices O'Connor, Scalia, Thomas, and Chief Justice Rehnquist, relied upon the Takings Clause in deciding that the Coal Act, as applied to *Eastern Enterprises*, constituted a severely

of law that comes from that decision. Thus, the court will not consider the Defendants' takings claim.

In addition, the fact that five justices ultimately struck down the "reach-back" provision is not binding precedent. Only four justices agreed on the analytical method, the Takings Clause, in coming to the unconstitutional conclusion. *Id.* at 537. Of those five justices basing their analysis on the Due Process Clause, four upheld the Coal Act's constitutionality. *Id.* at 554. Such a polarized opinion does not bind the inferior courts. *Anker Energy Corp. v. Consolidation Coal Co.*, 177 F.3d 161, 170 (3rd Cir. 1999). While the fact that four justices decided that the Coal Act is constitutional under the Due Process Clause might seem to provide the court with the ammunition that it needs to make this determination, the Fourth Circuit's position on this issue gives the court even greater direction.

In a case quite similar to the one at hand, *Holland v. Keenan Trucking Co.*, 102 F.3d 736 (4th Cir. 1996), the Fourth Circuit could not have been more clear in its message to future due process challengers of the Coal Act. There, the court stated:

> "It is difficult to exaggerate the burden that appellants [the challengers of the Act] must overcome to carry the day on this argument [the due process challenge]."

In so concluding, the Fourth Circuit recanted the well-settled constitutional principles applicable to economic

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retroactive, legislative scheme that constituted an unconstitutional taking. 524 U.S. at 537. Justice Kennedy concurred with the plurality opinion as to the unconstitutionality of the Act, but refused to coalesce in the analysis deferring instead to an examination of the fairness of the Coal Act's application to *Eastern Enterprises* under the Due Process Clause. The dissenting justices, Breyer, Stevens, Souter, and Ginsburg, agreed with Justice Kennedy's use of a due process analysis, but disagreed in the result. These disparate positions among the justices produced but one rule of law, namely, that a challenge to the Coal Act's funding provisions must proceed under the Due Process Clause, and not as a Takings Clause examination.

legislation. Legislation passed pursuant to the commerce power, like the Coal Act, carries a heavy presumption of validity. *Id.* at *740* (citing *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15, 49 L. Ed. 2d 752, 96 S. Ct. 2882 (1976)). Accordingly, when an economic regulation reasonably addresses a legitimate legislative concern, judgments as to the wisdom of the law are "within the exclusive province of the legislative and executive branches." *Id.* (quoting *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729, 81 L. Ed. 2d 601, 104 S. Ct. 2709 (1984)).

The heavy presumption of validity carries over to economic legislation that imposes a retroactive burden based on acts done in the past. *Id.* (citing *R.A. Gray & Co.*, 467 U.S. at 729). Furthermore, this tenet controls despite the fact that the retroactive effect of the legislation might be "harsh and oppressive." *Id.* As observed by the Fourth Circuit, "harsh and oppressive" is simply shorthand for "arbitrary and irrational." *Id.* (citing *R.A. Gray & Co.*, 467 U.S. at 729). Therefore, this court must uphold the Coal Act if its means [the funding provisions] will reasonably effectuate a legitimate result. Without a doubt, the Coal Act passes this minimal constitutional test. The Fourth Circuit's findings in *Keenan Trucking Co.* are persuasive to that end.

First, the legitimacy of the Coal Act's purpose cannot be disputed. 102 F.3d at 741. Labor unrest in the form of major coal strikes and the accompanying violence is all too familiar to this court. The economic impact of these strikes and the potential ramification of a fiscal failure of UMWA health benefit plans were giving rise to severe and far-reaching disruptions in local and interstate commerce. *Id.* Any attempt to alleviate such turmoil is unquestionably of legitimate legislative concern. *Id.*

Second, it was reasonable for Congress to extend the liabilities for funding the Coal Act to those "who have profited from the fruits of their [the retired miners] labor." *Id.* (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 18, 49 L. Ed. 2d 752, 96 S. Ct. 2882 (1976)). Most conclusively,

it was rational to place funding liability on NBCWA signatories because it was those agreements and the negotiations leading up to those agreements that, for the most part, created the expectations of lifetime benefits in mine workers. *Id.*; *see* also *District 29, UMWA v. UMWA 1974 Benefit Plan and Trust*, 826 F.2d 280, 282 (4th Cir. 1987) (stating that the "intentions of the parties in providing for retirement health benefits was to guarantee their provision for life"). Quoting the Seventh Circuit, the Fourth Circuit opined that "'it would be irrational to draw the line anywhere other than' NBCWA signatories." *Keenan Trucking Co.*, 102 F.3d at 741. Simply put, these observations are fatal to the Defendants' constitutional claim. As stated previously, Pardee was a "me too" signatory to the 1978 NBCWA notwithstanding the semantic formula one might choose to employ in explaining its status under that agreement. Considering the burden placed upon a party when making a constitutional claim of the sort presented by this case, it is easy to see why Pardee's liability under the Act lives or dies by this "me too" designation. As a signatory operator, any assignment validly made under the Coal Act is constitutional as applied against Pardee and its sister companies insofar as they are "related persons" as discussed earlier in this opinion. As a result, the court need not consider the Defendants' severability argument.

IV CONCLUSION

For reasons set forth above, the Plaintiffs' Motion for Summary Judgment is granted as it pertains to the Hess assignment and denied as to the Bolling and Brewer assignments. Accordingly, Defendants' Cross Motion for Summary Judgment is granted as it pertains to the Bolling and Brewer assignments.

The court holds as a matter of law that Pardee was a "me too" signatory to the 1978 NBCWA, that October 1, 1993 represents the final date for the SSA to have made assignments under the Coal Act, and that the Coal Industry Retirees Health Benefits Act of 1992 is constitutional as

applied to Pardee and related persons. Judgment as to Plaintiffs' entitlement to fees and costs, if any, will await a determination of whether Pardee does, in fact, owe money to the fund for the Hess assignment.

The Clerk is directed to send certified copies of this Memorandum Opinion and Order to counsel of record.

ENTER: This 7th day of April 2000.

Glen M. Williams
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX C

CLERK'S OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED
MAY 16 2000
MORGAN E. SCOTT, JR. CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

CIVIL ACTION NO. 98-110-A

Michael H. Holland, et al.,
Plaintiffs,

v.

Pardee Coal Company, Inc., et al.,
Defendants.

ORDER

If appearing to the court that the parties hereto have stipulated that there is an amount due and owing to Pardee Coal Company from the Plaintiffs in the sum of $546.29, it is hereby ADJUDGED and ORDERED that final judgment is hereby GRANTED to Pardee in the sum of $546.29, for which execution shall issue. As nothing further remains to be done in this cause, it is hereby stricken from the docket.

ENTER: This day of May 16, 2000.

/S/ Glenn M. Williams
Senior United States' District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 14, 2001

No. 00-1770
CA-98-110-A

MICHAEL H. HOLLAND, Trustee of the United Mine Workers of America Combined Benefit Fund; MARTY D. HUDSON, Trustee of the United Mine Workers of America Combined Benefit Fund; ELLIOT A. SEGAL, Trustee of the United Mine Workers of America Combined Benefit Fund; THOMAS O. S. RAND, Trustee of the United Mine Workers of America Combined Benefit Fund; WILLIAM P. HOBGOOD, Trustee of the United Mine Workers of America Benefit Fund; GAIL R. WILENSKY, Trustee of the United Mine Workers of America Combined Benefit Fund; CARL E. VAN HORN, Trustee of the United Mine Workers of America Combined Benefit Fund

Plaintiffs – Appellants

v.

PARDEE COAL COMPANY; HUMPHREYS ENTERPRISES, INCORPORATED; RIVER RESOURCES, INCORPORATED; GREATER WISE, INCORPORATED; RED RIVER COAL COMPANY, INCORPORATED

Defendants – Appellees

UNITED STATES OF AMERICA

Amicus Curiae

On Petition for Rehearing and Rehearing En Banc

The Appellees' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court

/s/ Patricia S. Connor

Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 20, 2001

No. 00-1770
CA-98-110-A

MICHAEL H. HOLLAND, Trustee of the United Mine Workers of America Combined Benefit Fund; MARTY D. HUDSON, Trustee of the United Mine Workers of America Combined Benefit Fund; ELLIOT A. SEGAL, Trustee of the United Mine Workers of America Combined Benefit Fund; THOMAS O. S. RAND, Trustee of the United Mine Workers of America Combined Benefit Fund; WILLIAM P. HOBGOOD, Trustee of the United Mine Workers of America Benefit Fund; GAIL R. WILENSKY, Trustee of the United Mine Workers of America Combined Benefit Fund; CARL E. VAN HORN, Trustee of the United Mine Workers of America Combined Benefit Fund

Plaintiffs – Appellants

v.

PARDEE COAL COMPANY; HUMPHREYS ENTERPRISES, INCORPORATED; RIVER RESOURCES, INCORPORATED; GREATER WISE, INCORPORATED; RED RIVER COAL COMPANY, INCORPORATED

Defendants – Appellees

UNITED STATES OF AMERICA

Amicus Curiae

ORDER

The Appellees' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Wheeling-Pittsburgh Steel Corporation and Wheeling Pittsburgh Coal Company filed a motion for leave to file an amici curiae memorandum in support of the Appellee's petition for rehearing en banc.

The Court denies the motion.

Judge Niemeyer would grant the amici curiae motion and the petition for rehearing.

This order supercedes the order of November 14, 2001.

For the Court

/s/ Patricia S. Connor

Clerk